REMARKS

Claims 17-36 are currently pending. The Office Action asserts that the application contains groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1. Specifically, Applicants have been requested to select between the following groups of inventions for continued prosecution on the merits:

Group I, claims 17-21 and 31-34, drawn to a flavoring composition;

Group II, claims 22-26, 35 and 36, drawn to a method of flavoring a foodstuff or beverage;

Group III, claims 27-29, drawn to a water containing foodstuff or beverage; and

Group IV, claim 30, drawn to a process of manufacturing a flavoring composition.

Applicants hereby elect Group I. This election is made **with traverse**. Specifically, Applicants disagree that restriction between Group I and Group II is proper and instead, it is believed that the claims of these two Groups should be examined together.

Applicants traverse the restriction on the grounds that restriction is simply not warranted or justified pursuant to the unity of invention standard of the Patent Cooperation Treaty. PCT Rule 13.2 states that unity of invention "shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features." PCT Rule 13.2 (emphasis supplied). However, the restriction made in the present Office Action appears to be predicated on a different standard, and specifically one which would find unity of invention between inventions to be lacking unless the inventions share all of the same or corresponding technical features. The Office Action, in Paragraph 3, simply repeats claims 17 and 22, among others, and concludes that the presence of some exclusivity between the claims justifies the present restriction. However, by focusing on what technical features are not shared between the claims, this rationale disregards the clearly overlapping special technical features that exist between them. To be sure, claim 22 (Group II) includes all of the features of claim 17 (Group I) by virtue of the fact that the method of flavoring a foodstuff or beverage of claim 22 does so by incorporating into the foodstuff or beverage an amount of the flavoring composition of claim 17. Unity of invention requires

overlap of one or more of the same or corresponding special technical features. Supporting a restriction requirement by identifying features that do not overlap cannot suffice.

The restriction between a compound and a method using the compound is also contrary to the rules devised by the United States governing restriction practice under the PCT. Specifically, subpart (b) of 37 C.F.R. § 1.475, titled "Unity of invention before the International Searching Authority, the International Preliminary Examining Authority and during the national stage," states:

> (b) An international or a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories:
>
> ...
>
> (2) A product and a process of use of said product....

37 C.F.R. § 1.475(b).

Here, Groups I and II fall squarely within this classification. Claim 17 (Group I) is directed to a flavoring composition (i.e., a product) while claim 22 (Group II) is directed to a method of flavoring a foodstuff or beverage by incorporating an amount of the composition of claim 17 (i.e., a use of said product).

Accordingly, Applicants respectfully submit that restriction between Groups I and II is improper.

CONCLUSION

For the reasons set forth above, it is respectfully requested that the restriction between the claims of Groups I and II be withdrawn and that claims 17-26 and 31-36 be examined on the merits.

Respectfully submitted,

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